

[Advisory Opinion 1995-7]

MEMORANDUM

April 11, 1995

TO: [Name withheld]

FROM: Jay L. Cohen Chair [signed]
Montgomery County Ethics Commission

RE: Request for Advisory Opinion – Mental Health Advisory Committee

You have requested an advisory opinion from the Montgomery County Ethics Commission regarding your application for appointment as a voting member of the Montgomery County Mental Health Advisory Committee (MHAC) to represent the legal profession. You have provided the following information in support of your request.

You are employed full-time as a policy attorney at the United States Equal Employment Opportunity Commission (EEOC) and work on issues involving the Americans with Disabilities Act (ADA) and its coverage of individuals with psychiatric disabilities. You previously submitted a request for advice with this Commission, when you applied for appointment in 1993. You have explained that your duties include coordinating regulations and other policy issues prepared by federal agencies which involve EEO directly or indirectly. You also answer letters, give informal advice and prepare policy documents addressing issues that focus on the ADA and psychiatric disabilities. On your own time, you indicate that you may write an article about psychiatric disabilities and ADA without compensation. If you are appointed to the MHAC, you state that you would recuse yourself from all votes involving the ADA, the EEOC, or other civil rights matters related in any way to your employment.

The MHAC is established to achieve a variety of goals, including to monitor the allocation of mental health services within the County, to determine the needs of the County mental health system, and to recommend to the County Government appropriate allocation of funds and appropriate priorities for State and County comprehensive mental health plans. §24-38 of the Montgomery County Code 1994, as amended. The composition of the MHAC appears in §24-34 of the Montgomery County Code 1994, and includes seven voting members selected from 14 categories of individuals, one of which is “the legal profession in the County”. §24-34(b)(1) of the Montgomery County Code. As the Commission explained in its opinion to you in 1993, the Ethics Law prohibits a public employee from participating in a matter that affects, in a manner distinct from its effect on public generally, any business in which the public employee has an economic interest. §19A-11(a)(1)(B) of the Montgomery County Code. A member of a committee is specifically included within the definition of “public employee” §19A-4(m) of the Montgomery County Code. Furthermore, a public employee is prohibited from participating in a matter if the public employee knows or reasonably should know that

any party to the matter is any business in which the public employee is an employee.
§19A-11(a)(2)(A) of the Montgomery County Code.

Based upon the conditions you propose, the Ethics Commission agrees that you may participate on the MHAC if appointed. This means that you should recuse yourself from all votes on issues involving the ADA, the EEOC, or other civil rights matters related to your employment. In addition, as we indicated previously, the Commission assumes that your employment with the EEOC will be publicly disclosed prior to appointment and that you will not use any confidential information acquired from membership on the MHAC for private matters or for your work with the EEOC.

If you have any questions concerning this advisory opinion, please do not hesitate to contact the Commission.

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission